

NO. \_\_\_\_\_

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	
	§	
iMERGENT, INC.,	§	
STORESONLINE INC. d/b/a	§	BEXAR COUNTY, TEXAS
STORESONLINE.COM	§	
f/k/a GALAXY MALL	§	
BRANDON LEWIS and	§	
DONALD DANKS	§	
Defendants	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the State of Texas, acting by and through Attorney General of Texas Greg Abbott, complains of iMERGENT, INC., d/b/a StoresOnLine.com, BRANDON LEWIS, and DONALD DANKS, Defendants, and for cause of action would respectfully show as follows:

**I. JURISDICTION**

1.1. This action is governed under Discovery Control Plan level II pursuant to TRCP Rule 190.3 and is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (hereafter the "DTPA") upon the ground that

Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

1.2 This action is also brought under the authority granted the Attorney General by §41.302 of the Texas Business Opportunity Act, TEX. BUS. COMM. CODE §41.001 *et seq.* (hereafter the "TBOA") upon the ground that Defendants have committed prohibited acts while engaged in the sale of business opportunities in Texas.

## II. DEFENDANTS

2.1. Defendant iMERGENT, INC. is a Delaware corporation doing business in Texas as alleged specifically below and may be served with process by serving its registered agent, Frank C. Hayman at 754 East Technology, Ave., Orem, Utah 84097.

2.1. Defendant STORESONLINE INC. d/b/a StoresOnLine.com is a wholly owned subsidiary of iMERGENT, INC., and is a Delaware corporation doing business in Texas as alleged specifically below; it may be served with process by serving its registered agent, Frank C. Hayman at 754 East Technology, Ave., Orem, Utah 84097.

2.2. Defendant BRANDON LEWIS is the President of iMERGENT INC., is an individual doing business in Texas as alleged specifically below and may be served with process at his place of business at 754 East Technology, Ave., Orem, Utah 84097.

2.3. Defendant DONALD DANKS is the Chairman of the Board of iMERGENT INC., is an individual doing business in Texas as alleged specifically below and may be served with process at his place of business at 754 East Technology, Ave., Orem, Utah 84097.

2.4. Defendant iMERGENT, INC. does business under the assumed name of StoresOnLine.com.

### III. VENUE

3. Venue of this suit lies in BEXAR County, Texas for the following reasons:

A) Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or part of the causes of action alleged herein accrued in BEXAR County, Texas.

B) Under the DTPA §17.47(b), venue is proper because Defendants have done business in BEXAR County, Texas as follows: Defendants have sold business opportunities, software, and services in Bexar County using deceptive representations.

### IV. PUBLIC INTEREST

4. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

### V. TRADE AND COMMERCE

5. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by §17.45(6) of the DTPA and have engaged in conduct which constitutes the sale of business opportunities as those terms are defined by §41.004 of the TBOA. Defendant iMergent, Inc. is not registered with the Secretary of State of Texas pursuant to TBOA §41.051.

#### VI. ACTS OF AGENTS

6. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- A) Defendants performed or participated in the act, or
- B) Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

#### VII. NOTICE BEFORE SUIT

7. The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

#### VIII. NATURE OF DEFENDANTS' OPERATIONS

8.1. iMergent, through its corporately owned subsidiary, StoresOnLine, Inc. d/b/a StoresOnLine, (hereafter SOL) formerly known as Galaxy Mall, Inc., sells software and service packages for starting and conducting business on the Internet. These software and service packages are sold with the representation that by using these software and services, the

purchaser will be able to put up a storefront website on the Internet from which the purchaser/business operator will be able to sell his or her particular services or products.

Defendants BRANDON LEWIS and DONALD DANKS control and operate SOL, personally direct the operation of SOL, and personally set out how SOL sells its storefront websites and services to business opportunity purchasers. Incorporated in Delaware with headquarters in Utah, SOL holds seminars in hotels around the nation soliciting individuals interested in starting a business on the Internet.

8.2. Because SOL sells, for an initial consideration of more than \$500, services and software that will be used by the purchaser to begin a business in which SOL represents that the purchaser will earn or is likely to earn a profit in excess of the initial consideration paid by the purchaser and that SOL will provide the location, in the form of a website, for the purpose of conducting the business, SOL is selling business opportunities pursuant to TEX. BUS. & COMM. CODE §41.004. SOL is not registered as a seller of business opportunities with the Texas Secretary of State.

8.3. The initial seminars, used by SOL as lead generators, inform consumers of the various methods of doing business on the Internet; for example, they mention various areas of placement for business on the Internet, how to promote business on the Internet, and the alleged technical assistance SOL will provide with programmed websites in order to make the businesses look as professional as possible. Besides selling websites, the seminars also sell training sessions to be held approximately a week later which last about nine hours and which go into more detail about these methods and procedures allegedly to get their business running at a high level and making money on the Internet. Prior to selling any of its business

opportunities, SOL does not provide any of the disclosures required by law regarding ownership, sales period, description of services, financial statements, training description, security description, delivery date, earnings representations, legal actions, bankruptcy information, and a sample copy of the contract. SOL represents that by purchasing and using its software and services, the businesses started by the purchasers will bring income to the purchasers which is many times greater than the amount being paid to SOL for its software and services.

8.4. At these seminars, SOL sells website packages which contain such materials as the storefront websites, store building software, credit card processing licenses and coaching assistance. The packages vary in price depending on how much the consumer wants to invest in the business opportunity. After the business operator has purchased an initial package and started operation, they are then approached by the company with offers of expert technical assistance that will help their Internet business run at a higher level. The expert technical assistance offered by the company is an extra cost to the business operator of \$4,000 on up.

8.5. Several complaints filed with the Office of Attorney General of Texas indicate that deceptive and misleading representations are being made to consumers at the seminars to induce them to buy these services and products, leaving them believing that technical assistance is part of the package they are purchasing, when in fact, this assistance is not being provided. Once they have bought these packages, they are basically left with worthless software which does not work and for which they are asked to pay still more money for more assistance which is of little or no value.

## IX. SPECIFIC FACTUAL ALLEGATIONS

9.1 The consumer in OAG file number 164903 who is a resident of Bexar County, filed a complaint stating that after attending a hotel seminar in San Antonio, Bexar County, Texas, held by Galaxy Mall Inc., now SOL, he purchased three storefronts from SOL at a cost of \$1,950 for all three; a one year merchant fee of \$150; a net/merchant account for \$990, and an autoresponder<sup>1</sup> for \$300. This purchase was financed by a finance company called LeaseComm. This consumer stated that the software he received was faulty and could not be used. He contacted SOL's customer service department during which time he waited long periods of time on the telephone only to discover that the representatives could not answer his technical questions. He also complained that the company contacted him in order to offer one-to-one technical assistance, denominated as an "executive mentor", as a way to correct his problem and to increase his success rate. The mentor, however, was to cost an extra \$1,415; he declined to purchase the mentor program. He was lead to believe that the mentor program was part of the package he had purchased at the seminar and not an extra that would cost him more money. He indicates that the company provided none of the services that they promised and that the company tried to extract additional money from him by soliciting the sale of technical assistance that should have been provided from the start. He paid SOL a total of \$5,075.28.

9.2. The consumer in OAG file number 164228 filed a complaint stating that he purchased a website from SOL from which he intended to advertise and sell his books and CD's. He stated that once his website was operational, people began to complain to him that they could not

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<sup>1</sup>An autoresponder is a computer program which automatically responds to incoming e-mail messages with pre-recorded responses.

purchase the items that they wanted from his online store. He indicates that the software could not process the sales orders he was receiving and lost many sales. He says that his website had approximately 6,430 visitors but only 10 sales. He contacted the company many times to try to correct the problem but the only responses he received was that nothing was wrong. He paid SOL a total of \$3,649.00.

9.3. The consumer in OAG file number 138161 filed a complaint stating that she had attended an SOL seminar during which she purchased website storefronts and other materials that she was told would help her in developing her online stores. She complains that she was promised expert advice on programing and promoting her website. She states that she never received the expert advice she was promised, that the items she received from SOL did not work, and that the software was faulty and provided no helpful information. She indicates that when she complained to the company, they offered her what was described as professional coaching assistance also known as “executive mentoring” which cost her an extra \$4,113.00. She states that the coaching sessions were simply a few 20-30 minute phone conversations that allegedly informed her of where she could find solutions to her problems. This complainant paid SOL a total of \$10,036.90.

9.4 The consumer in OAG file number 137284 filed a complaint stating that he had attended an SOL seminar in Austin, Texas during which he purchased a website, programs, and services to start his online business. After paying SOL, he did not receive any of the services that were promised. He also states that he did not receive any of the expert advice that was promised and that the software he was sold did not work. He called the company, received no help, but was told that if he wanted extra help he would have to pay an extra charge that ranged from \$3,000-

\$10,000. He complains that there were numerous extra charges for services that were to be part of the package he purchased at the seminar. He paid SOL a total of \$3,874.48.

9.5. The consumer in OAG file number 143366 stated that she attended an SOL seminar in San Antonio, Texas at which she purchased a website package. She states that the software she received did not work properly and when she tried to return it, the company indicated there were no refunds after three days of purchase. She unsuccessfully contacted the company in order to get help with the software problems to no avail; she tried to return the materials, but the company would not take them back, stating that they would not give any refunds. This complainant paid SOL a total of \$4,299.00.

9.6. The consumer in OAG file number 144279 filed a complaint in indicating that she attended a seminar at which SOL represented that they could get her started in an Internet business by selling her all the software, help, and resources needed. She was told that the software was user friendly and problem free. However the software she received from SOL was faulty and she had numerous problems installing and working with it. She indicates that she was later contacted by another SOL representative who tried to sell her extra assistance in order to get her system running at a high level. She claims that SOL sells faulty software and does not provide the services that it represents it will provide. This complainant paid SOL a total of \$500.00 as a down payment.

## X. PROHIBITED ACTS IN VIOLATION OF THE TBOA

10. Defendants, as alleged above and detailed below, have in the course of selling business opportunities, committed prohibited acts declared unlawful in §§41.051, 41.1151, and 41.301 of the TBOA. Such acts include:

A. Misrepresenting the services which will be provided with the sale of the software and website in order to induce the sale of the services, thereby making representations and employing a device, scheme, or artifice to deceive purchasers while engaged in the sale of business opportunities, as alleged more specifically in paragraphs 8.1 through 9.6 above, in violation of §41.301(1) of the TBOA.

B. Failing to register a business opportunity with the Texas Secretary of State prior to the advertisement, offer for sale, or sale of a business opportunity, as alleged more specifically in paragraph 8.2 above, in violation of §41.051 of the TBOA.

C. Failing to provide the purchaser of a business opportunity the “Disclosures Required By Texas Law” at least 10 business days prior to the receipt by the seller of any consideration for the business opportunity, as alleged more specifically in paragraph 8.3 above, in violation of §41.151 *et seq.* of the TBOA.

D. Failing to provide the purchaser of a business opportunity a full and detailed description of the acts or services the seller will undertake to perform for the purchaser, as alleged more specifically in paragraphs 8.1 through 9.6 above, in violation of §41.201(2) of the TBOA.

E. Making the representations set out in §41.004(a)(1) of the TBOA regarding income during the course of selling business opportunities without having obtained or established a \$25,000.00 surety bond, irrevocable letter of credit or trust account, as alleged more specifically in paragraphs 8.1 through 9.6 above, in violation of §41.101 of the TBOA.

## XI. FALSE, MISLEADING OR DECEPTIVE ACTS

11. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA. Such acts include:

A) representing that training, counseling, and technical support will be provided with the sale of the website and software and thereafter requiring additional purchase money to provide training, counseling, and technical support, thereby representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, as alleged more specifically in paragraphs 9.1 through 9.6 above, in violation of §17.46(b)(5) of the DTPA;

B) representing that the software sold will be problem free and will be useful in operating a business and accepting purchase orders for the business and thereafter selling faulty software which is useless to the purchaser, thereby representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, as alleged more specifically in paragraphs 9.1 through 9.6 above, in violation of §17.46(b)(7) of the DTPA;

C) advertising and representing that technical support and counseling will be provided with the website and software packages and then failing to provide it without requiring additional payments, thereby advertising goods or services with intent not to sell them as advertised, as

alleged more specifically in paragraphs 9.1 through 9.6 above, in violation of §17.46(b)(9) of the DTPA;

D) representing that the agreement to purchase the software and website packages includes an agreement to provide training, counseling, and technical support, thereby representing that an agreement confers or involves rights, remedies or obligations which it does not have or involve or which are prohibited by law, as alleged more specifically in paragraphs 9.1 through 9.6 above, in violation of §17.46(b)(12) of the DTPA;

E) deceptively engaging in a sales and marketing scheme designed to extract more money for services promised but not provided with the initial software and service packages, as alleged more specifically in paragraphs 8.1 through 9.6 above, in violation of §17.46(a) of the DTPA.

## XII. INJURY TO CONSUMERS

12. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

## XIII. PRAYER

13. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the STATE OF TEXAS and to the general public.

14. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A) misrepresenting that coaches and/or mentors will be provided after the seminars to assist purchasers in setting up their business without payment of additional funds;

B) failing to provide the purchaser of a business opportunity a full and detailed description of the acts or services that SOL will undertake to perform for the purchaser;

C) failing to provide the purchaser of a website, software, or store front package a full and detailed description of the acts or services that SOL will undertake to perform for the purchaser;

D) misrepresenting any of the details of starting up Internet businesses;

E) causing confusion as to the degree of support, coaching, and assistance to be provided to the purchaser by SOL after the sale to the purchaser of the services or software;

F) failing to register the business opportunity offered by SOL with the Texas Secretary of State prior to the advertisement, offer for sale, or sale of any storefront website offered by SOL;

G) failing to provide the purchaser of a storefront website the “Disclosures Required By Texas Law” at least 10 business days prior to the receipt by SOL of any consideration for the business opportunity sold by SOL;

H) failing to provide the purchaser of a storefront website a written contract for the sale of the business opportunity;

I) selling storefront websites without having obtained or established a \$25,000.00 surety bond, irrevocable letter of credit or trust account;

J) misrepresenting the amount of income to be made from the storefront websites sold by SOL; and

K) selling faulty, non-working, defective, or otherwise inoperable software.

15. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A) Adjudge against each Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of \$20,000 per violation of the DTPA.

B) Order Defendants, jointly and severally, to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses.

C) Order Defendants, jointly and severally, to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE, §402.006(c).

D) Order Defendants, jointly and severally, to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law.

E) Grant all other relief to which Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,

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